

S.B.Civil Second Appeal No.107/2005

LRS of Smt. Jai Kunwar and others. vs. Laxmi Kant.

Date : 22.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Thanvi, for the appellants.

Mr. NK Rastogi, for the respondent.

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Heard learned counsel for the parties.

The appellants are aggrieved against the judgment and decree passed by the two courts below in a suit for redemption of mortgaged property. In a suit filed by one Laxmi Kant for redemption of mortgage dated 5.4.1967, the trial court decreed the suit of the plaintiff on 2.3.1998. The appellants preferred appeal before the first appellate court to challenge the judgment and decree dated 2.3.1998. The appeal was dismissed by the first appellate court vide judgment and decree dated 17.2.2005. Hence, this second appeal.

According to learned counsel for the appellants, two courts below committed serious error of law in holding that the gift deed on the basis of which the plaintiff filed suit for redemption of the mortgaged property, bears the signature of two attesting witnesses.

According to learned counsel for the appellants, the plaintiff produced original gift deed which is Ex.2. In the

original gift deed, the name of two persons Natwar Lal and Laxmi Narayan Shah has been shown as attesting witnesses whereas in fact, the signatures of Laxmi Narayan and Natwar Lal were obtained subsequently after the registration of the document and, therefore, in the register of Sub-Registrar where the documents were registered, there is no mention of the name of these two witnesses. According to learned counsel for the appellants, this fact has been proved by the appellants by obtaining certified copy from the office of Sub-Registrar. According to learned counsel for the appellants, in view of the above, the suit has been filed by a person having no right to redeem the mortgaged property and, therefore, the suit should have been dismissed.

I have considered the submissions of learned counsel for the appellants and perused the record and also the original gift deed Ex.2 and Ex.A/1 which was produced by the plaintiff and defendants respectively.

It is clear from the certified copy of gift deed dated 4.2.1980 (Ex.A/1) itself that the gift deed was attested by two witnesses Harish Chandra and Shiv Karan and their signatures appear just after the signatures of the executant Smt. Sharda Bai. Not only this, but both the witnesses were present before the Sub-Registrar when the document was registered and Sub Registrar also appended note that the said Harish Chandra and Shiv Karan identified the executant Smt. Sharda Bai and also put their signatures

as attesting witnesses. The said Harish Chandra and Shiv Karan again signed the document below the endorsement of the Sub-Registrar. In view of the above, it is clear that the original gift deed bears the signature of two attesting witnesses.

It appears from the reasons given by the appellate court in the impugned judgment that the appellate court observed that even if the above two persons identified the executant, still they signed the documents as attesting witnesses. From the record, it appears that they signed the documents in both the capacities as the persons identifying the executant as well as attesting witnesses.

In view of the above, I do not find any merit in this appeal. No substantial question is involved in this appeal.

Accordingly, this second appeal is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya